IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1464 (SS) OF 2003

Avdesh Prasad, Constable No. 13854,
S/o Sri Bandhoo Prasad,
R/o Village Belwa Post Teliya Kalan,
P.S. Maiel Dewaria,
Presently posted as Constable 10 Batallion,
B-Company, P.A.C. Rudrapur,
District-Udham Singh Nagar. .....Petitioner.

Versus

1. State of Uttaranchal, through the Chief Secretary, Home, Uttaranchal Shasan, Dehradun.
2. Deputy Inspector of Police, P.A.C. Western Division, Moradabad, Camp at Rudrapur, District Udham Singh Nagar.
3. Commandant, 31st Battalion, P.A.C. Rudrapur, District-Udham Singh Nagar.
4. Commandant, B-Company, 10th Batallion, P.A.C. Barabanki, Uttar Pradesh. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri C.K. Sharma, Advocate for the petitioner and Standing Counsel for the respondents.

2. By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to pay the salary to the petitioner at the current rate/revised rate.

3. The grievance of the petitioner is that in pursuance of the order passed by the Allahabad High Court on 28.08.2000 (Annexure No. 2 to the writ petition) a direction was made for reinstatement of the petitioner without any prejudice to the inquiry. The same has not yet been completed and the increments have not been paid to the petitioner. Operative portion of the order is quoted below:-

> "The suspension order is in contemplation of disciplinary enquiry. It is traceable to Clause (a) of Rule 17(1) of the Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991. About seven years have passed and yet no charge-sheet has been issued. It shows that the impugned order of suspension was not in contemplation of disciplinary enquiry. It may be pertinent to observe that Clause (b) of Rule 17(1) of the said Rule empowers the authority to suspend a police officer involved in a criminal case, if such charge is connected with his position as a officer or or is likely to embarrass him in discharge of his duties or inmvolves moral turpitude. In this case, however, recourse has not been taken to provisions of Clause (b) of rule 17(1) of the aforesaid Rule. Rather the order has been passed in contemplation of disciplinary enquiry but no enquiry has been commenced as no charge sheet has been issued till date. If a case is covered by Clause (b) but the order is passed under Clause (a), it would be fraud on powers. It is, therefore, provided that the petitioner shall be reinstated without prejudice to the enquiry which may be held and taken to its logical and within such time as may be convenient to the disciplinary authority and also without prejudice to the power of the appointing authority."

4. In view of the aforesaid facts, the respondents are directed to decide the claim of the petitioner in accordance with the order passed by the Allahabad High Court on 28th August, 2000.

5. Subject to aforesaid, writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

25.08.2006
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